

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2006

CORAM:

THE HONOURABLE MR.JUSTICE P.K.MISRA  
and  
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

W.P.No.38503 of 2003

1. The Inspector General of Police  
Law & Order, Chennai-4.
2. The Deputy Inspector General of Police  
Tiruchirapalli Range  
Tiruchirapalli. ...Petitioners

versus

1. M.Savariguru
2. The Registrar  
Tamil Nadu Administrative Tribunal  
Chennai-104. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari calling for the records pertaining to the orders of the Tamil Nadu Administrative Tribunal, Chennai, the second respondent herein, made in O.A.No.4836 of 2002 dated 13.3.2003 and to quash the same.

सत्यमेव जयते

For petitioner : Mr.S.Gomathi Nayagam  
Special Government Pleader

For respondent No.1 : Mr.Bala representing  
M/s.Bala & Daisy

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ORDER

CHITRA VENKATARAMAN, J.

The second respondent in the writ petition is a direct recruit to the post of Sub Inspector of Police. He was charge-sheeted under Rule 3(b) of the Tamil Nadu Police Subordinate Service (Disciplinary and Appeal) Rules, 1955, on the ground of "reprehensible conduct and spoiling the morale of the post, by having illicit intimacy with one Malathi, wife of one Vijayan; that he tried to seduce one Rani alias Maragatha Rani, daughter of Vijayan; the said Rani attempted to commit suicide" (Page 2 of the affidavit). On the complaint received by the Deputy Superintendent of Police, an enquiry was conducted, leading to a prima facie case against the first respondent. In the course of the departmental proceedings, the prosecution witnesses turned hostile and went against their statement previously given at the time of preliminary enquiry before the enquiry officer. Taking note of the complaint given and the statement by the witnesses at the time of preliminary enquiry and considering the fact that such conduct was detrimental to the good image of such disciplined uniformed forces, the delinquent was awarded a punishment of dismissal from service by the Deputy Inspector General of Police, Trichy Range, in his proceedings dated 28.7.2002.

2. Aggrieved of the said order passed by the second petitioner herein, the delinquent officer, the first respondent in the writ petition, moved an Original Application before the Tamil Nadu Administrative Tribunal and sought for a quashing of the order dated 28.7.2002 and to consequently direct the writ petitioners to reinstate the first respondent into service with all benefits therein.

3. The applicant in the O.A./the first respondent in this writ petition contended before the Tribunal that the evidence adduced at the time of enquiry ought to have been given its due weightage and that the disciplinary authorities erred in placing reliance on the statements given at the time of preliminary enquiry to impose a major punishment. Thus the first respondent submitted that the whole proceedings was in violation of the principles of natural justice. The first respondent further submitted that he ought not to have been punished on mere suspicion without any proof of the charge. The first respondent placed reliance on the decision of the Supreme Court of this Court in 1979-L.W. 428), and AIR 1966 SC 1827 to impress on the fact that the order passed merely on suspicion was liable to be quashed. The first respondent submitted that there was

no fair and reasonable enquiry and that the punishment imposed was disproportionate; hence, contrary to the principles laid down by the Apex Court in (2000) 3 SCC 450.

4. The contention of the first respondent was resisted by the writ petitioners before the Tribunal emphasizing the fact that the issue related to the morality and chastity of the complainant-witnesses and hence, considering the surrounding circumstances, the statement given at the time of preliminary enquiry should be given their due weightage in the matter of awarding punishment, particularly to a delinquent who was working in a disciplined service, namely, Police force. The writ petitioner further submitted in their reply before the Tribunal that the punishment was awarded after a conclusive finding and this was not on mere assumption or presumption. The petitioner further submitted that the first respondent was a direct recruit Sub Inspector of Police and had misbehaved with the members of the family of his subordinates and that the conduct of the first respondent was detrimental to the main image of the force and hence, could not be allowed to continue in service.

5. By order dated 13<sup>th</sup> March 2003 in O.A.No.4836 of 2002, the Tamil Nadu Administrative Tribunal allowed the application, setting aside the order of dismissal and directed the writ petitioners to reinstate the first respondent with all back-wages and service benefits. Accepting the case of the first respondent, the Tribunal went into the evidence and the findings of the disciplinary authority to arrive at a conclusion that there was absolutely no basis for the allegation that there was illicit intimacy between the delinquent officer, the first respondent herein and Malathi, wife of Vijayan, Head Constable, as well as with Rani, daughter of Vijayan. The Tribunal held that the mother and daughter had denied their relationship with the delinquent officer and there was nothing in the evidence of Vijayan to prove that there existed any relationship between the first respondent and Rani, daughter of Vijayan. Referring to the evidence of the Deputy Superintendent of Police, the enquiry officer, the Tribunal held that as P.W.5, the Deputy Superintendent of Police himself had relied upon the statement of witnesses at the time of preliminary enquiry which were all denied by the witnesses later on. Placing reliance on the decision of the Supreme Court in AIR 1969 SC 983, the Tribunal ultimately held that the order of the disciplinary authority was totally wrong; thus the relief as prayed for was granted to the first respondent.

6. Aggrieved by the order of the Tribunal, the Inspector General of Police (Law and Order) and Deputy Inspector General of Police, Tiruchirapalli Range, have preferred the writ petition.

Challenging the order of the Tribunal, it is contended by the writ petitioners that the Tribunal committed a grave error in ignoring the fact that the first respondent had committed serious misconduct and misdemeanor, unbecoming of a member of the disciplined force; that the Tribunal had erred in ignoring the fact that the incident had taken place in the police quarters campus; that the evidence given by the witnesses at the time of enquiry had to be given their due weightage proving the guilt of the respondent herein; that instead of taking care of the welfare and dignity of the subordinates and their family and the people in his jurisdiction, the respondent had acted in an irresponsible and shocking manner to bring disrepute and harm to the good image of uniformed forces. The petitioner further submitted that the Tribunal ought to have taken note of the fact that the issue related to the chastity of the ladies which had compelled them to turn hostile at the time of enquiry; hence, the statement given at the time of preliminary enquiry and report ought to have been accepted as a good pointer to the conduct of the respondent warranting dismissal from service.

7. The learned Special Government Pleader appearing for the petitioners further submitted that the interference by the Tribunal as an appellate authority was totally contrary to the decisions of this Court and the Supreme Court and that it ought not to have substituted its views.

8. Learned counsel for the first respondent supporting the order of the Tribunal, submitted that the order of dismissal was based on no evidence and perversity and the Tribunal was justified in setting aside the order and hence, prayed for dismissal of the writ petition.

9. A perusal of the enquiry report showed that the first respondent had acted in a manner which was derogatory of the dignity of a disciplined force; that forgetting his status, had misbehaved with the wife and daughter of a subordinate official; that the conduct of the delinquent officer had taken one of the affected parties even to the extent of attempting on her life. Considering the fact that the conduct of the delinquent officer was totally on an immoral plane bringing disrepute to the dignity of the police force, the enquiry officer found as a matter of fact that the first respondent had committed a serious act, touching on the morale and character. It is seen from the enquiry report that as P.W.1, Malathi, had stated that the delinquent had enticed her and had sexual intercourse with her; as P.W.2, Maragatha Rani, daughter of Vijayan, had also spoken about the misbehaviour of the first respondent. The statement given by Malathi is further strengthened by the evidence of P.W.3, Vijayan and it is not out of place to

mention that in the enquiry, the delinquent officer admitted that he had seduced Malathi, wife of Vijayan; that however, he did not have any relationship with Maragatha Rani. The delinquent officer had admitted that he had sexual intercourse with her about five or six times, but when his relationship with Malathi came to the knowledge of the higher officials, the said Vijayan was asked to vacate the residence from the quarters and accordingly, the said Vijayan had shifted his residence from 31.5.2001 night. The learned counsel for the first respondent produced before us the copies of the statements recorded at the time of preliminary enquiry before the enquiry officer. It is seen that the statements from the delinquent officer and from the witnesses were recorded on different dates, and a reading of the statements would show that the delinquent officer, the first respondent herein, did misbehave with Malathi and Rani. It is not without surprise that at the time of final enquiry before the disciplinary authority, Malathi and Maragatha Rani turned hostile. The conduct of the hostile witnesses in staying away had to be viewed, keeping in mind the greater repercussions that they are likely to have in familial and social life. The fact remained that the first respondent had committed the offence charged and the fact that the witnesses turned hostile does not, in any way, do away with the fact that the first respondent had, on his own admission, committed the offence. Even assuming that the affected parties have turned hostile, as we had earlier stated, the statement admitting the guilt itself is good enough to confirm the punishment awarded on the first respondent.

10. Learned counsel for the first respondent placed reliance on the decision of the Division Bench of this Court in W.P.Nos.29862 and 32581 of 2002 dated 22.2.2005 to impress on the fact that when the witnesses had turned hostile and did not support the earlier stand before the enquiry officer, there was absolutely no material to prove the charge levelled against the delinquent officer and hence, the Tribunal was fully justified in setting aside the order.

11. A perusal of the decision of the Division Bench of this Court shows that on the analysis of the entire facts, this Court held that there was no acceptable evidence to take a view different from that of the Tribunal quashing the order of dismissal. In the context of the said finding, the decision of this Court in W.P.Nos.29862 and 32581 of 2002 dated 22.2.2005 is distinguishable. The case on hand reveals the fact that the delinquent officer himself had admitted about his illicit relationship with the wife of the subordinate officer. Leaving aside the statement of the hostile witnesses, on the very admission by this delinquent officer, one can say that the order of punishment is a justified one factually and legally too.

12. Learned counsel for the first respondent further placed reliance on an unreported decision of a Division Bench of this Court in W.P.Nos.10957 of 2004 and batch of cases dated 8.4.2005, wherein, the Division Bench dismissed the writ petition filed by the State against the order of the Tamil Nadu Administrative Tribunal quashing the order of dismissal. On a perusal of the said decision, it is seen that on an appreciation of the evidence from facts found by the authorities below as well as by the Tribunal, this Court upheld the order of the Tribunal holding that the findings were perverse and not supported by any evidence on record. This Court, referring to the decision of the Supreme Court in KULDEEP SINGH Vs. THE COMMISSIONER OF POLICE AND OTHERS (1998 (9) Supreme 452), held that the evidences were uncorroborated and unreliable which necessitated the Tribunal to interfere with the findings of the disciplinary authority. This Court rejected the contention that the order of the disciplinary authority could not be interfered with and that Article 226 of the Constitution is not a Court of appeal; that if there was some acceptable evidence on record which could be relied upon, then the conclusions would not be disturbed as perverse. On the facts, this Court found that the order of the Tribunal was sustainable.

14. The decision of the Supreme Court relied on, viz., (2001) 1 SCC 65 (UNION OF INDIA Vs. K.A.KITTU AND OTHERS) and AIR 1969 SC 983 (CENTRAL BANK OF INDIA Vs. P.C.JAIN) were rendered on the fact situation prevalent therein and hence could not be applied to support the respondents' plea.

15. As regards the judgment reported in (2001) 1 SCC 65 in the case of UNION OF INDIA Vs. K.A.KITTU AND OTHERS, it may be seen that on the factual front, the Tribunal's decision that the finding of the Enquiry Officer/ disciplinary authority was based on no evidence was upheld by the Supreme Court. In the context of the findings rendered by the Tribunal therein, the Supreme Court dismissed the appeal preferred by the Union of India. As regards the decision reported in AIR 1969 SC 983 in the case of CENTRAL BANK OF INDIA Vs. P.C.JAIN, the Supreme Court held that an Industrial Tribunal can disregard the findings of an Enquiry Officer only if the findings were perverse. It held that "the test of perversity that is indicated in these cases is that the findings may not be supported by any legal evidence at all." Referring to the decision reported in AIR 1963 SC 1723 in the case of STATE OF ANDHRA PRADESH Vs. S.SREE RAMA RAO, the Supreme Court noted "But the departmental authorities are, if the enquiry is otherwise properly held, the sole Judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the

High Court in a proceeding for a writ under Article 226 of the Constitution."

16. In the context of the legal principles and the factual findings, the Supreme Court affirmed the view of the Tribunal that the findings recorded by the enquiry officer were perverse and not supported by any legal evidence. In the background of the decision of the Supreme Court speaking on the jurisdiction of the Tribunal and this Court under Article 226, if we look at the conclusions arrived at, we may say that there is nothing perverse as regards the finding arrived at by the disciplinary authority. The admitted facts by the delinquent officer would clearly show of his relationship with the wife of one Head Constable and his daughter. The enquiry conducted giving due credence to the statements of the witnesses Malathi, wife of the Head Constable, and his daughter speaking about the conduct of the delinquent officer which, as we had already noted, are facts admitted by the delinquent officer in his statement; that Vijayan, husband of Malathi, had stated at the time of enquiry that the delinquent officer seduced his wife for which he admonished his wife; that on this account, he had to shift his residence from Thiruvankurichi to Manachanalur. In the context of the behaviour exposed of Malathi and the delinquent officer, although the said Malathi did not appear in the departmental disciplinary proceedings, due weightage was given to the statement given by the witnesses at the time of preliminary enquiry. Thus, on the preponderance of probabilities, as a guiding factor, the delinquent officer was visited with a penalty order of dismissal.

17. It may be noted that sufficiency or otherwise of the evidences leading to the punishment of the official is concerned is not a matter for the Tribunal to go into by way of a re-appreciation of the evidence and virtually to go back to a stage prior to the conclusion of the disciplinary enquiry. A perusal of the decision of the Supreme Court, reported in JT 1994 (7) SC 744, (TRANSPORT COMMISSIONER, MADRAS-5 Vs. A.RADHAKRISHNA MOORTHY), as relied upon by the learned Special Government Pleader for the State, shows that the jurisdiction of the Tribunal is akin to the power of the High Court under Article 226. The power of judicial review is limited to the extent of procedural correction of the decision making process. In the absence of any material contra to substantiate the stand of the delinquent official or show the perversity of the findings of the disciplinary authority, the order of the Tribunal interfering with the findings of the ultimate fact finding body cannot be sustained by this Court. It may be noted that the conduct of the delinquent officer is not befitting a police officer. The disciplined force owe a duty to the public in general. Apart from bringing disrepute to the services, failure to maintain discipline

even in his relationship with a fellow official, would undermine the faith of the general public at large in the law enforcing authorities in the matter of getting protection, thereby shake the very confidence of the public in the uniformed forces. The narrow technicalities in the matter of not examining the hostile witnesses cannot sway the preponderance of probabilities arising from the very admission of the delinquent official. The order of the Tribunal ignoring the statement of the delinquent officer, hence, is liable to be quashed. It is factually incorrect on the part of the Tribunal to state that on preliminary enquiry, it admitted that none of the witnesses had spoken about the illicit relationship between the witnesses and the applicant. In the context of the statements of the delinquent official and the other witnesses speaking about the conduct, the order of punishment given to the first respondent is fully justified. In the circumstances, the Tribunal's order dated 13.3.2003 in O.A.No.4836 of 2002 is hereby quashed and the writ petition is allowed. Connected W.P.M.P.No. 46727 of 2003 is closed.

ksv

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:  
The Registrar  
Tamil Nadu Administrative Tribunal  
Chennai-104.

+ 1 cc to Government Pleader, SR No.4717/06

TM(CO)  
SR/13.2.2006

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Order in

W.P.No.38503 of 2003